IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

Crl.Rev.Pet.No. 73 of 1999()

CRA.19/1992 of ADDL.SESSIONS COURT, KOTTAYAM
ST.1276/1988 of JUDL. MAGISTRATE OF FIRST CLASS, CHANGANACHERRY

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REVN. PETITIONER:

K.K. SURENDRAN NAIR, GEETHALAYA
SANTHIPURAM,
KARUKACHAL.

BY ADV. SRI.PIRAPPANCODE V.SREEDHARAN NAIR
SRI.S.P.ARAVINDAKSHAN PILLAY
SRI.PIRAPPANCODE V.S.SUDHIR

RESPONDENTS:

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1. C.V. MARKOSE, FOOD INSPECTOR
MADAPPALI PANCHAYAT
CHANGANACHERRY CRCLE.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIIC PROSECUTOR, OFFICE OF THE advocate general
high court buildings, ernakulam.

BY ADV. SRI.BABU S.NAIR
BY PUBLIC PROSEUTOR MR. AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 29/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.R.P.NO.73 of 1999

DATED THIS THE 29th Day of May 2007

ORDER

The revision petitioner is the accused who stands convicted for the offence under Sections 2(1)(a) and 7(1)(iii) read with Section 16(1)(a)(1) of the Prevention of Food Adulteration Act 1954 and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.1,000/- and in default to undergo simple imprisonment for one month. The first accused is absconding, it is submitted .

2. The prosecution case is that the 2nd accused, who is the owner of a provision shop, sold 375 grams of tea dust from a package of 1 ½ Kgs, accepted the price from the Food Inspector which on examination by the Public Analysis was found to be adulterated as it did not conform to the standard prescribed for tea under the Prevention of Food Adulteration Act.

3. The evidence adduced in the matter consisted of the testimony of Pws.1 to 6 and Exts.P1 to P14. The defence examined Pws.1 and 2 and got marked Ext.D1. The only

contention raised by the counsel for the revision petitioner is that the revision petitioner is entitled for the protection of Section 19(2) read with proviso to Section 14 of the Prevention of Food Adulteration Act. According to him, the accused has purchased the commodity from a dealer and Ext.D1bill evidences the purchase by A2 and hence he is entitled to be protected under Section 19(2). Ext.D1 is the bill produced by DW2, who is accused No.2, and DW1, who witnessed the purchase by the 2nd accused, have testified with respect to the purchase of tea dust by the 2nd accused. According to the counsel, the prosecution has not disputed the genuineness of Ext.D1 bill and hence the same coupled with the evidence of Dws.1 and 2 has to be taken as evidence sufficient for the protection under Section 19(2). The courts below discarded Ext.D1 bill pointing out that Ext.D1 cannot be taken as a genuine bill obtained in the ordinary course of business as there is no sales tax or licence number and that the date of the bill and the articles sold are written in different ink.

4. On a perusal of Ext.D1 and the version of Pws.1 and 2, I find that the version of the accused in this regard cannot be

rejected as such. As pointed out by counsel for the revision petitioner, nothing has been suggested in the cross examination of DW1 that Ext.D1 is a concocted document. The only question asked is with respect to the absence of licence number and sales tax number. The cross examination of DW2 also is absent with respect to any suggestion as to the genuineness of Ext.D1. I find that Ext.D1 is a printed bill. Of course, it appears that two ball pens are used in writing the date and in writing the name of the purchaser and the name of the commodity. It is possible that the date is noted at the time that the articles handed over. It is the version of Dws.1 and 2 that the articles used to be supplied at the shop. Hence, the above possibility cannot be ruled out. It has also to be noted as mentioned above that Ext.D1 is issued in a printed format.

In the circumstances, I find that the accuse is entitled to the benefit of doubt. The revision petition is allowed and the accused is acquitted.

Sd/-

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.R.P.NO.73 OF 1999

ORDER

29-5-2007